

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPLY COMMENTS OF ERICSSON INC**

Ericsson Inc (“Ericsson”) hereby submits its reply to the comments filed in the proceeding initiated by the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking*, released March 10, 2004 (“*NPRM*”).<sup>1</sup> The *NPRM* sought comment on issues relating to services and applications utilizing Internet Protocol (“IP”), collectively referred to in the *NPRM* as “IP-enabled services.” The *NPRM* sought comment on ways in which the Commission might categorize IP-enabled services to ensure that any regulations applied are limited to those services and/or applications for which they are most appropriate. The Commission received approximately one hundred seventy-three (173) comments, many of which supported preemption of state regulation of IP-enabled services and light-touch regulation by the Commission.

Ericsson commends the Commission for its proposal to address regulation of IP-enabled services. Specifically, Ericsson supports preemption of state regulation and the Commission’s apparent acknowledgement that any regulation of IP-enabled services, including Voice over Internet Protocol (“VoIP”), must be carefully considered and narrowly tailored. Any regulation of IP-enabled services should be global rather than local or regional, due to the inherent global nature of the Internet. Ericsson encourages the Commission to take this opportunity to shape the regulatory treatment of VoIP and strive for consistency in the international regulatory approach

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<sup>1</sup> *Notice of Proposed Rulemaking, In the Matter of IP-Enabled Services*, WC Docket No. 04-36, 19 FCC Rcd. 4863 (rel. Mar. 10, 2004).

to IP-enabled services by working with regulators throughout the world. Ericsson applauds the initiative of the Commission's Internet Policy Working Group to hold a roundtable discussion on July 30, 2004 to address international issues associated with the migration of communications services and applications to IP-based technologies.<sup>2</sup>

1. About Ericsson.

Ericsson's comments in this proceeding are based on its experience as a global telecommunications supplier, active in more than one hundred forty countries. Ericsson supplies operators and service providers around the world with end-to-end solutions for wireless and wireline networks. Ericsson's solutions include network infrastructure (including IP-based networks), access equipment and terminals, application enablers, and global services.<sup>3</sup> This provides Ericsson with a global perspective regarding IP-enabled networks and services.

2. IP-Enabled Services are Ill-Suited for State-By-State Regulation.

Described as "a unique and wholly new medium of worldwide communication,"<sup>4</sup> the Internet enables "millions of people to communicate and access information from around the world."<sup>5</sup> In recent years, boundaries have blurred as technology has evolved and use of the Internet has proliferated, creating inherently nomadic IP-enabled services.

IP-enabled services facilitate communications originated or received by a customer who may access the Internet from any broadband pipe, by mobile or fixed technology, anywhere in the world instead of at a single, fixed geographic location. The inability to fix the geographic origin or destination of an IP-enabled communication supports preemption of state regulation of IP-enabled services.

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<sup>2</sup> *FCC to Hold Global Roundtable Discussion on Internet-Protocol Based Services*, News Release, (rel. July 12, 2004) ("Global Roundtable Notice").

<sup>3</sup> See generally Ericsson Inc's website, available at <<http://www.ericsson.com>> (2004).

<sup>4</sup> *Zeran v. America Online, Inc.*, 129 F.3d 327, 238-29 (4th Cir. 1997), cert. denied, 524 U.S. 937 (1998).

<sup>5</sup> *Reno v. ACLU*, 521 U.S. 844, 849-50 (1997).

Alongside the strong growth in high-speed Internet access, the integration of both mobile and fixed networks and circuit-switched and IP-based networks enables seamless delivery of services across networks, irrespective of the delivery network, whether it is a mobile wireless, fixed wireless, wireline, cable, or satellite network.

CTIA noted in its Comments that, unlike traditional circuit-switched networks, IP networks typically are not configured to identify the originating or terminating point of any communication.<sup>6</sup> Users to whom communications are addressed may access the communications from any point on the worldwide Internet. It is impossible to narrow the geographic location of the sender and receiver – the calling and called parties – to one fixed location. Furthermore, IP networks do not send data packets over set routes. Two data packets from the same communication may travel along different routes to get to the same destination. As a result, it is not possible to determine whether any transmission by IP-enabled services is an *intrastate* communication, as contemplated by Section 2(b) of the Communications Act of 1934, as amended.<sup>7</sup> Given the inability to identify and separate any intrastate IP-enabled communication from interstate and global IP-enabled communications, the states must “yield to exclusive federal jurisdiction.”<sup>8</sup> As CTIA argued,

IP-enabled services, whether viewed as telecommunications services or information services, are provided without regard to jurisdictional boundaries. Thus for both policy and legal reasons, the FCC should preempt state regulation of IP-enabled services.<sup>9</sup>

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<sup>6</sup> Comments of CTIA –The Wireless Association, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 (fil. May 28, 2004) (“CTIA Comments”) at 3.

<sup>7</sup> 47 U.S.C. § 152(b) (2001).

<sup>8</sup> *Memorandum Opinion and Order, In The Matter of Petition For Declaratory Ruling That Pulver.Com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, 19 FCC Rcd. 3307, 3324 n. 91 (rel. Feb. 19, 2004); *see also California v. F.C.C.*, 39 F.3d 919, 931 (9th Cir. 1994).

<sup>9</sup> CTIA Comments at 7.

Congress echoes this sentiment. Several bills have been introduced; each designed to preempt state regulation of IP-enabled services.<sup>10</sup> Recently, two state regulators urged the Commission to assert exclusive jurisdiction over IP-enabled services – VoIP technology in particular.<sup>11</sup> The California Public Utilities Commission (“CPUC”) and the Florida Public Service Commission (“FPSC”) asked that the Commission preempt state economic regulation of VoIP. CPUC Commissioner Susan Kennedy stated that there could be nothing worse than a patchwork of 50 different state regulations throughout the country. She stated further, “[t]his is a global industry, we need a national policy.”<sup>12</sup> Ericsson supports Commissioner Kennedy’s view.

As AT&T noted, subjecting IP-enabled applications to potentially open-ended state regulation designed for traditional telecommunications services would impose unjustified regulatory burdens on IP-enabled services and create regulatory uncertainties that would inevitably impede investment and product development.<sup>13</sup> As Verizon argued, the Commission should exercise exclusive jurisdiction over IP-enabled services and preempt state regulation of those services.<sup>14</sup> Without question, the Commission has the authority, and perhaps even the duty, under Sections 2(a), 201(b), and 230(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152(a), 201(b), and 230(b)(2), to preempt state regulation of IP-enabled services. Once it preempts state regulation, the Commission should carefully consider whether regulation of IP-enabled services is necessary.

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<sup>10</sup> On April 2, 2004, Rep. Pickering introduced the VoIP Regulatory Freedom Act of 2004, H.R. 4129, 108th Cong. (2004); on April 6, 2004, Sen. Sununu introduced the Senate version, S. 2281, 108th Cong. (2004); on July 6, 2004, Rep. Stearns and Rep. Boucher introduced the Advanced Internet Communications Services Act of 2004, H.R. 4757, 108th Cong. (2004).

<sup>11</sup> Edie Herman, *State Regulators Urge FCC to Preempt Them From VoIP Oversight*, Vol. 24, No. 120, *Communications Daily* 4-5 (2004).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> Comments of AT&T Corp., *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 (fil. May 28, 2004) at 45.

<sup>14</sup> Comments of the Verizon Telephone Companies, *In the Matter of IP-Enabled Services; In the Matter of Petition of SBC Communications Inc. for Forbearance Under 47 U.S.C. § 160 from Application of Title II Common Carrier Regulation to “IP Platform Services,”* WT Docket Nos. 04-36, 04-29 (fil. May 28, 2004) at 31.

3. Public Interest Needs Should be Met by Industry-Led Initiatives.

Before effecting extensive regulation, the Commission must allow industry the time and space to answer social needs attendant to the provision of IP-enabled services. In its comments, the Telecommunications Industry Association (“TIA”) noted that the FCC’s current regulatory regime includes certain core “public interest” issues, including concerns about Communications Assistance for Law Enforcement Act (“CALEA”) compliance, accommodation of emergency responders and other public safety needs, consumer protection, and accessibility for persons with disabilities.<sup>15</sup> TIA argued that industry-led efforts would lead to the best possible solutions to answering these public interest needs.<sup>16</sup>

Clearly, industry-led solutions to social needs are developing. Ericsson notes that the Network Reliability and Interoperability Council (“NRIC”) already has taken up issues relating to 911/E911 application to IP-enabled services.<sup>17</sup> Ericsson urges the Commission to refrain from imposing the so-called social obligations on IP-enabled services and permit industry-led efforts to address these needs.

4. Ericsson Encourages the Commission to Take this Opportunity to Shape the Regulatory Treatment of IP-Enabled Services and Strive for Consistency in the International Regulatory Approach.

Ericsson agrees with TIA that the Commission’s policies on IP communications will have international implications.<sup>18</sup> Regulation of IP-enabled services should be “global,” rather than local or regional, due to the inherent nomadic nature of Internet usage.

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<sup>15</sup> Comments of the Telecommunications Industry Association, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 (fil. May 28, 2004) (“TIA Comments”) at 9.

<sup>16</sup> *Id.*

<sup>17</sup> See Charter of the Network Reliability and Interoperability Council – VII, available at <[http://www.nric.org/charter\\_vii/NRICVII%20Charter%20-%20FINAL\\_Amended\\_2004\\_3\\_12\\_04.doc](http://www.nric.org/charter_vii/NRICVII%20Charter%20-%20FINAL_Amended_2004_3_12_04.doc)> (2004).

<sup>18</sup> TIA Comments at 5.

As the Commission noted in its announcement of the upcoming global roundtable discussion, countries around the world are grappling with the same challenges as those facing the Commission as technological advances remove distinctions between communications technologies.<sup>19</sup> During the last several months, a number of regulators throughout the world have initiated proceedings on VoIP and are moving in tandem with the FCC.

On March 15, 2004, the European Commission organized a public workshop at which a study on VoIP by the consulting firm Analysys Ltd was presented.<sup>20</sup> On June 15, 2004, the European Commission published an Information and Consultation Document on the Treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework.<sup>21</sup> The European Commission aims to clarify how the 2003 EU regulatory framework applies to VoIP. Comments in the European Commission proceeding are due by August 31, 2004.

Similar consultations have been initiated in a number of EU member countries, including Spain,<sup>22</sup> France,<sup>23</sup> Germany,<sup>24</sup> and the Netherlands.<sup>25</sup> OfCom, the UK regulator, recently

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<sup>19</sup> Global Roundtable Notice.

<sup>20</sup> *Final Report for the European Commission, IP Voice and Associated Convergent Services*, Analysys (Jan. 28, 2004), available at <[http://europa.eu.int/information\\_society/topics/ecom/doc/useful\\_information/library/studies\\_ext\\_consult/ip\\_voice/401\\_28\\_ip\\_voice\\_and\\_associated\\_convergent\\_services.pdf](http://europa.eu.int/information_society/topics/ecom/doc/useful_information/library/studies_ext_consult/ip_voice/401_28_ip_voice_and_associated_convergent_services.pdf)>

<sup>21</sup> *Commission Staff Working Document on The treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework, An Information and Consultation Document*, European Commission, Information Society Directorate-General, available at <[http://europa.eu.int/information\\_society/topics/ecom/doc/useful\\_information/library/commiss\\_serv\\_do/406\\_14\\_voip\\_consult\\_paper\\_v2\\_1.pdf](http://europa.eu.int/information_society/topics/ecom/doc/useful_information/library/commiss_serv_do/406_14_voip_consult_paper_v2_1.pdf)>

<sup>22</sup> *Consulta Pública sobre la Provisión de Servicios de Voz Mediante Tecnologías IP (VoIP)*, Comision del Mercado de las Telecomunicaciones, available at <[http://www.cmt.es/cmt/centro\\_info/c\\_publica/pdf/cp\\_VoIP.pdf](http://www.cmt.es/cmt/centro_info/c_publica/pdf/cp_VoIP.pdf)> (2004).

<sup>23</sup> *Les Titres de la Presse du Lundi 21 Juin 2004*, Autorité de Régulation des Télécommunications, available at <<http://www.art-telecom.com/communiques/revue/2004/21juin.htm>> (2004).

<sup>24</sup> *RegTP Opens Consultation on Voice over IP*, Regulatory Authority for Telecommunications and Post, available at <<http://www.regtp.de/en/aktuelles/pm/02952/index.html>> (2004).

<sup>25</sup> *Consultatie VoDSL en Uitnodiging Ronde Tafel*, Onafhankelijke Post en Telecommunicatie Autoriteit, available at <[http://www.opta.nl/download/Openb\\_versie\\_codo\\_VoDSL.pdf](http://www.opta.nl/download/Openb_versie_codo_VoDSL.pdf)> (2003) and *Voice-over-packet technology*, Stratix, available at <<http://www.opta.nl/download/VoIP%20rapportage%20Stratix%20nl%20.pdf>> (2003).

published questions and answers on using VoIP technology to deliver communications services to customers.<sup>26</sup>

On April 7, 2004, the Canadian Radio-television and Telecommunications Commission issued a public notice to address the Regulatory framework for voice communication services using Internet Protocol.<sup>27</sup>

Ericsson encourages the Commission to take this opportunity to shape the regulatory treatment of IP-enabled services and strive for consistency in the global regulatory approach to IP-enabled services by working with regulators throughout the world. As TIA pointed out, the definition of VoIP and related service offerings certainly will be discussed in the services negotiations in the Doha Round of the World Trade Organization.<sup>28</sup> The time is ripe for an international dialogue on IP-enabled services among the world's regulators.

Ericsson applauds the initiative of the Commission's Internet Policy Working Group to hold a roundtable discussion to address international issues associated with the migration of communications services and applications to IP-based technologies.

5. Stable, Consistent Regulation of IP-enabled Services Promotes Innovation.

Ericsson shares a primary concern of many commenters: that the imposition of regulation would hamper the continued growth and innovation of IP-enabled services.<sup>29</sup> The Commission must first preempt state regulation of IP-enabled services and then carefully consider any regulation it proposes. The Commission must ensure that the proposed regulatory scheme:

- Promotes clarity, predictability, transparency, and fairness;

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<sup>26</sup> *Questions and Answers on Voice over IP and Voice over Broadband Services*, Office of Communications, available at <[http://www.ofcom.org.uk/ind\\_groups/ind\\_groups/telecommunications/vob/vobqa/section1/?a=87101](http://www.ofcom.org.uk/ind_groups/ind_groups/telecommunications/vob/vobqa/section1/?a=87101)> (2004).

<sup>27</sup> *Telecom Public Notice CRTC 2004-2, Regulatory Framework for Voice Communication Services Using Internet Protocol*, Canadian Radio-television and Telecommunications Commission, available at <<http://www.crtc.gc.ca/archive/ENG/Notices/2004/pt2004-2.htm>> (2004).

<sup>28</sup> TIA Comments at 5.

<sup>29</sup> *Id.*

- Is kept to a minimum and only serves to support justified public policy objectives. This calls for an ongoing evaluation of existing rules in light of market and technological developments;
- Provides equal opportunities for all types of networks and does not favor any underlying technology; and
- Does not supplant effective industry efforts to respond to the needs of the market, or otherwise interfere with innovation and competition in the marketplace.

## 6. Conclusion

Ericsson supports preemption of state regulation and the Commission's apparent acknowledgement that any regulation of IP-enabled services must be carefully considered and narrowly tailored. Ericsson urges the Commission to refrain from imposing the so-called social obligations on IP-enabled services and permit industry-led efforts to address these needs.

Any regulation of IP-enabled services should be "global" rather than local or regional, due to the inherent global nature of the Internet. Ericsson encourages the Commission to take this opportunity to shape the regulatory treatment of VoIP and strive for consistency in the international regulatory approach to IP-enabled services by working with regulators throughout the world.

Respectfully submitted this 14th day of July 2004.

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